

Decision 02-11-051 November 21, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of U.S. TelePacific Corp. and
SIPCO Limited for Approval of Acquisition by
SIPCO Limited of Indirect Control over U.S.
TelePacific Corp.

Application 02-05-057
(Filed May 29, 2002)

**OPINION GRANTING APPLICATION TO
ACQUIRE INDIRECT CONTROL**

I. Summary

This decision grants the joint application of U.S. TelePacific Corp. (U-5721-C) (TelePacific) and SIPCO Limited (SIPCO) (Joint Applicants) for approval of the acquisition by SIPCO of indirect control over TelePacific. We also grant Joint Applicants' motion for a protective order.

II. Jurisdiction

The application has been filed pursuant to Pub. Util. Code § 854 and Rule 35 of the Commission's Rules of Practice and Procedure. Section 854 precludes any person or corporation from transferring control of any public utility organized and doing business in this state without first securing authorization to do so from this Commission upon a finding that the transfer of control is in the public interest. The purpose of this and related sections is to enable the Commission, before any transfer of public utility property is consummated, to review the situation and to take such action as the public interest may require. (*San Jose Water Co.* (1916) 10 CRC 56.)

III. Categorization

Applicants have requested that this matter be categorized as ratesetting and that no hearings are necessary. By Resolution ALJ 176-3089, dated June 7, 2002, the Commission preliminary determined that this was a ratesetting proceeding, and that no hearings were expected.

Notice of this application appeared in the Commission's June 6, 2002, Daily Calendar. With no filed protests, there is no reason to hold a public hearing and no reason to change the preliminary determinations made in Resolution ALJ 176-3089.

IV. The Parties

TelePacific is a California corporation and a wholly owned subsidiary of U.S. TelePacific Holdings Corp. (Holdings).¹ By Decision (D.) 96-12-057 and D.97-12-084 (as modified by D.98-07-045), we granted TelePacific certificates of public convenience and necessity (CPCN) to operate in California as an interexchange carrier and as a facilities-based and resale local exchange service provider. D.96-12-057 assigned TelePacific, a nondominant telecommunications carrier, its U-5721-C corporate identification number.²

SIPCO is a corporation organized under the laws of the Cayman Islands. Through various affiliates and subsidiaries, SIPCO operates as a principal and intermediary in international investments involving a variety of industries. SIPCO exists and operates for the convenience of its subsidiaries' management.

¹ TelePacific formerly was known as Justice Long Distance Corp. and Justice Long Distance Inc.

² In D.99-11-066, we approved the transfer of control of TelePacific to Holdings. In D.00-11-022, we approved a change in indirect control necessitated by a change in the board of directors of Holdings.

Investcorp SA (Investcorp) is an indirect, partially owned subsidiary of SIPCO. Investcorp is the financial reporting entity for its affiliates. TelePacific Holdings Limited (THL), Investcorp TPC L.P. (ITPC), and TelePacific Equity Limited (TEL) are partially owned subsidiaries of Investcorp.³ THL, ITPC, and TEL are stockholders of Holdings.

V. The Transaction

Pursuant to the stock purchase agreement, Holdings issued \$40 million of Series D preferred stock. THL, ITPC, and TEL were the primary purchasers, and they now collectively own a majority of Holdings' voting stock—46.3%, 11.6%, and 16.3%, respectively.⁴ Investcorp's (and, therefore, SIPCO's) equity interests in these three companies are not sufficient to provide it with control over Holdings. However, through a combination of Investcorp's equity interests and management arrangements with other investors, Investcorp (and, ultimately, SIPCO) has the ability to exercise de facto control over Holdings and TelePacific. Although SIPCO's indirect control, through Investcorp, of THL, ITPC, and TEL places it in a position to control Holdings and TelePacific, the ability to vote Holdings' stock currently is restricted to preclude SIPCO from exercising such control until approvals from this Commission and other state and federal regulatory agencies are obtained. Similarly, the ability of THL, ITPC, and TEL to

³ Investcorp International, Inc. is the direct holder of the Investcorp investments in THL, ITPC, and TEL.

⁴ Prior to the new equity issuance, THL owned 16.77% of Holdings' stock and ITPC's predecessor, TelePacific Investments Limited had 4.20%. TEL had no investment in Holdings. (September 12, 2002 letter from Goodin, MacBride, Squeri, Ritchie & Day to ALJ Grau.)

designate one director on the board is precluded prior to obtaining regulatory approvals.

Where acquiring companies do not possess CPCNs, we apply the same requirements as an applicant seeking a CPCN to exercise the type of authority held by the company being acquired, a minimum of \$100,000 in cash or cash equivalent, and technical expertise in telecommunications or a related business. Existing investors Investcorp and SIPCO gain the ability to exercise control over Holdings and TelePacific through arrangements with other investors plus the increased investment. Because we have not previously reviewed SIPCO's compliance with our financial and technical requirements, we do so now.

Joint Applicants make the requisite financial showing through Investcorp.⁵ The financial statements provided demonstrate that Investcorp is profitable and has available funds far in excess of the minimum \$100,000. Following approval of the change in control, TelePacific will continue to be managed and operated by the individuals who currently manage and operate the company. The proposed transaction will have no impact on the day-to-day operations of TelePacific. However, Investcorp has substantial investments in the telecommunications and technology sector and has the technical expertise we require. Joint Applicants further confirm that to the best of SIPCO's knowledge no affiliate, officer, director, partner or owner of more than 10% of SIPCO has been sanctioned by the Federal Communications Commission or any state regulatory commission, has filed for bankruptcy or has been found criminally or civilly liable or is under investigation for consumer misrepresentation.

⁵ SIPCO exists for limited and narrow purposes. (November 8, 2002 letter from Goodin, MacBride, Squeri, Ritchie & Day to ALJ Grau.)

No new construction is being proposed. Accordingly, there is no possibility that the proposed transaction contemplated herein may have any significant impact on the environment.

VI. Public Interest

TelePacific and SIPCO state that approval of this proposed transaction is in the public interest, because TelePacific will continue its current operations without any foreseeable changes. In addition, TelePacific has the resources to properly carry out its operations, and the proposed acquisition will promote TelePacific's ability to raise capital, as necessary. We concur that the proposed transfer is in the public interest.

VII. Motion for a Protective Order

Joint Applicants filed a motion for a protective order for Exhibit C to the application, because it contains non-public financial information pertaining to Holdings. Joint Applicants state that public disclosure of this private, confidential information could subject Holdings and TelePacific to unfair competitive advantage. We have granted similar requests for confidential treatment and will issue a protective order.

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code, the otherwise applicable 30-day period for public review and comment is being waived.

VIII. Assignment of Proceeding

Michael Peevey is the Assigned Commissioner and Janice Grau is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Resolution ALJ 176-3089 determined that this was a ratesetting proceeding and that no hearings were expected.

2. Notice of this application appeared in the Commission's June 6, 2002 Daily Calendar.

3. No protests were filed.

4. This application has been filed pursuant to Pub. Util. Code § 854.

5. Pub. Util. Code § 854(b) and (c) are not applicable in this instance because none of the applicants has more than \$500 million in gross annual California revenues.

6. TelePacific will continue to operate as TelePacific.

7. No new construction is being proposed.

8. TelePacific is a nondominant telecommunications carrier.

9. Investcorp has sufficient financial resources to meet the Commission's requirements to operate as an interexchange carrier and as a facilities-based and resale local exchange carrier.

10. Investcorp possesses the necessary technical expertise required by the Commission.

Conclusions of Law

1. The proposed transfer of ownership and control of TelePacific to SIPCO is in the public interest.

2. It can be seen with certainty that the proposed transfer will not have any adverse impact on the environment.

3. Public convenience and necessity require the granting of this application to be effective on the date signed.

O R D E R

IT IS ORDERED that:

1. Applicants U.S. TelePacific Corp. (TelePacific) and SIPCO Limited (SIPCO) are authorized to indirectly transfer control of TelePacific, as set forth in the application.

2. TelePacific and SIPCO shall notify the Director of the Commission's Telecommunications Division in writing of the transfer of authority, as authorized herein, within 10 days of the date of consummation of such transfer.

3. The corporate identification number U-5721-C assigned to TelePacific shall continue to be used by TelePacific and shall be included in all original filings with this Commission and in the titles of other pleadings filed in existing cases.

4. The application is granted as set forth above and the authority granted shall expire if not exercised within one year after the effective date of this order.

5. Applicant's motion for a limited protective order to keep Exhibit C under seal is granted. Exhibit C shall remain under seal and not be accessible or disclosed to persons other than Commission staff for two years from today unless Applicant makes a timely request for extension of confidential treatment by filing a separate motion with good cause shown at least one month prior to the expiration of the confidential treatment.

6. Application 02-05-057 is closed.

This order is effective today.

Dated November 21, 2002, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
CARL W. WOOD

MICHAEL R. PEEVEY
Commissioners

Commissioner Geoffrey F. Brown, being
necessarily absent, did not participate.